

***Case No COMP/M.2353 -
RWE /
HIDROELECTRICA
DEL CANTÁBRICO***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 19/03/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.03.2001
SG (2001) D/286874

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No COMP/M.2353 – RWE/HIDROELÉCTRICA DEL CANTÁBRICO.

Notification of 16.02.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 16.02.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which the undertaking RWE España S.L. controlled by the German undertaking RWE Aktiengesellschaft (“RWE”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the Spanish undertaking Hidroeléctrica del Cantábrico S.A. (“Hidrocantábrico”) by way of public bid.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

THE PARTIES' ACTIVITIES AND THE OPERATION

3. Hidrocantábrico is mainly active as a generator, distributor and supplier of electricity in Spain and as a distributor and supplier of gas and telecommunications in Asturias (Spain). According

¹ OJ L 395, 30.12.1989 p.1; corrigendum OJ L 257 of 21.9.1990, p. 13, last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p.1, corrigendum OJ L 40, 13.2.1998, p.17).

to its governing rules none of its shareholders can hold more than 10% of its voting rights. Decisions are taken by majority of votes of shareholders present in the general shareholders meeting.

4. RWE España S.L. is a wholly-owned subsidiary of RWE. RWE is the ultimate parent company of a group of companies active in several business areas including energy, mining, and raw materials, environmental services, petroleum and chemicals, industrial systems and construction.
5. The above-mentioned public take-over (see point 1) was filed with the CNMV² on February 6, 2001 and constitutes an unconditional offer for the acquisition of 100% of Hidrocantábrico's share capital. The offer document was authorised by the Spanish authorities on March 7, 2001.

COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of RWE (47 918 million EURO) and Hidrocantábrico (891 million EURO) exceeds EURO 5 billion. The aggregate Community-wide turnover of each of at least two undertakings concerned is in excess of 250 million EURO (RWE 34 616 million EURO, Hidrocantábrico 891 million EURO) and not all of the undertakings do achieve more than two-thirds of their turnover in one and the same Member State. The notified operation therefore has a Community dimension.

COMPETITIVE ASSESSMENT

7. The parties' activities overlap only with respect to the supply of electricity to eligible customers. In this respect, and in line with past decisions for various Member States, including Spain³, the Commission found that the market for the supply of electricity to eligible customers is not larger than national. The Spanish electricity market will be entirely opened to all customers as of 1 January 2003.
8. In the only geographic market where Hidrocantábrico is active, Spain, RWE controls jointly with Iberdrola the "Tarragona Power" plant joint venture. Tarragona Power will build a gas-fired power plant with a capacity of around 1% of the current installed capacity. Tarragona Power will start operations by mid 2003. The plant will have a total capacity of approx. 400 MW, of which [up to more than 25%] will be supplied to BASF [on the basis of a long term supply agreement] . The surplus electricity will be sold on the Spanish pool and to eligible customers. This surplus represents only 1,29% of the total electricity consumption in Spain in 1999 and 12,7% of total Hidrocantábrico's present capacity. Given that the consumption of electricity is expected to increase in Spain in the near future as well as the generation capacity of Hidrocantábrico and Unión Fenosa, the parties believe that Tarragona Power's market position, when it starts operating, is likely to be even smaller.
9. In the Spanish market for eligible customers, Hidrocantábrico has at present a share of 6,6 %. Its share in total generation capacity is around 5% (2200 MW). It is true that Hidrocantábrico will increase its share of total capacity during the next two or three years. This is due to its

² Spanish Stock exchange regulator

³ For Spain, cf. case IV M. 2340 EDP/Cajastur/Caser/Hidroeléctrica de Cantábrico; cf. also COMP M 1952 RWE/Iberdrola/Tarragona Power JV; for other Member States cf. case IV M 1659 Preussen Elektra/EZH, case IV M. 1557 EDF/Louis/Dreyfus, case COMP M. 1673 VEBA/VIAG case COMP M 1803 Electrabel/Eon, COMP M. 1853 EDF/ENBw.

authorised co-generation expansion plans [...] and the fact that Endesa and Iberdrola (the two biggest Spanish electricity operators holding together 80% of generation capacity and 75% of sales to eligible customers) cannot expand their capacities because of legal prohibitions⁴. Nevertheless, its capacity share will not, in any case, exceed [less than 10%].

10. The question has been raised whether the present concentration might strengthen an existing collective dominant position held by third undertakings. Indeed, in previous cases (Unión Fenosa/Hidrocantábrico, Endesa/Iberdrola), the Spanish Authorities have found a collective dominant position of Endesa and Iberdrola to exist in the Spanish electricity market for supply to the pool (i.e. supply to eligible customers). It has been argued that the existence of the Tarragona joint venture between RWE and Iberdrola may adversely affect the incentives of RWE, compared to Hidrocantábrico as an independent company, to compete in the market at stake, a change which would strengthen the existing collective dominant position. The parties believe that the Tarragona joint venture is much too small to influence the competitive behaviour of RWE. It is of only minor commercial significance for RWE (the Tarragona plant turnover in its first year of operation is expected to be 0,3% of RWE total 1999 turnover) and the surplus capacity (not committed to BASF [on the basis of a long term supply agreement]) will only represent, by 2003, around 8% of RWE capacity in Spain if it acquires Hidrocantábrico⁵. In these circumstances they claim that the structural link between Hidrocantábrico and Iberdrola is so insignificant that it should not create any concern.
11. Electricity customers consulted during the market investigation did not express major concerns.
12. Accordingly, it can be concluded that the merger does not adversely affect competition under the said aspect.
13. As regards possible concerns arising from the elimination of a potential exporter of electricity from Germany to Spain and from Spain to Germany, given the limited interconnection capacity between France and Spain (1 100 MW) and the number of electricity companies that can export electricity to Spain and to Germany, the impact of the merger will be negligible.
14. Finally, even if the merger will imply the disappearance of one potential “ex novo” entrant (installation of new capacities) able to compete with the existing players in each of the countries where RWE and Hidrocantábrico operate, given the number of potential competitors existing at EEA and world level who are in a position to install new capacities in Germany and Spain, the transaction is not likely to create or strengthen a dominant position.
15. In these circumstances, the concentration will not lead to the creation or strengthening of a dominant position.

⁴ Law of 23.6.2000 that prohibits expansion for Iberdrola during a 3 year period and Endesa during a 5 year period.

⁵ The total capacity of RWE comprises the expected capacity of RWE in 2003 taking into account Hidrocantábrico’s present capacity, the additional capacity Hidrocantábrico will obtain and Tarragona plant’s capacity.

CONCLUSION

16. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89 and article 57 of the EEA Agreement.

For the Commission,

Mario MONTI
Member of the Commission